BEFORE THE HIGH COURT OF JUDICATURE
AT BILASPUR (CHATTISGARH)

Criminal appeal No. 88 / 2001

APPELLANT :-- Potami Raghu ,S/O Potami Bodda ,Age 37 years
Occupation - Agriculture R/O Bhonsaguda,
P.S.- Beejapur,Distt. ~~(Chattisgarh)~~ Dantewada.

VERSUS

RESPONDENT :-- STATE OF CHATTISGARH Through Police station-Beejapur,Distt.Dantewada(Chattisgarh)

(330)

Filed on 18.1.2001
by Shri K.K. Khan Advocate
R. to AR

CRIMINAL APPEAL U/S 374 ~~read with S.383~~ of Cr.P.C.against the judgment dated 20.11.2000 and sentencing order passed by learned Session Judge,BASTAR at Jagdalpur (Chattisgarh)presided by Shri Yakoob Ali ,in session case No.32/99 Potami Raghu.v/s State of Chattisgarh .

(24)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 88/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

23.11.2006

Mr. Ram Krishna Sharma, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J.

By this appeal under Section 374 (2) of Cr.P.C. accused/appellant has questioned the legality & correctness of the judgment of conviction and order of sentence dated 20.11.2000 passed by the Sessions Judge, Jagdalpur in S.T.No.32/99, whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the IPC sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that PW-4 Potami Bandu lodged a report in the Police Station Beejapur on 6.12.1998 to the effect that her brother -in-law Potami Raghu had committed murder of his wife, therefore, he was sent to jail.and a year back he has come back after his release from jail. As a piece of 5 acre land stands jointly in the name of her husband Potami Pandu and Potami Raghu, therefore, accused used to quarrel with her husband for his share in the said land, on which her husband replied that he will partition the land. Thereafter, the accused started quarrelling daily for partition of land. On 5.12.1998 at about 11.00 a.m. her husband left the house saying that he is going to Beejapur to bring tobacco. At

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आदेश पत्रक (पूर्वानुबद्ध)

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	about 4 pm in the afternoon the accused came to the field, carrying knife in his hand, and informed her that he has committed murder of her husband and he will kill her also, therefore, she took shelter in the house of her daughter Budri in Village Chilnaar. At about 5 pm she came back to the village, informed the Village Patel and other persons, at about 8 pm in the night a meeting was convened in the village and thereafter, they went to see the body of her husband Potami Pandu, which was lying in the forest near the plantation. Based on this information, Shri I.C. Shandilya (PW-3) registered the FIR (Ex.P-8) for commission of offence under Section 302 of IPC as also merg intimation (Ex.P-9), left for the scene of occurrence and after giving notice to the Panchas prepared the inquest (Ex.P-1). He also prepared the site plan. He took into possession the blood stained soil and plain soil from the place of occurrence under Ex.P-2, sent the body of Potami Pandu under Ex.P-10 for postmortem examination to the Primary Health Centre, Beejapur, where Dr. D.P. Prajapati (PW-1) conducted the postmortem and prepared the report Ex.P-5. He opined that on account of haemorrhage as a result of injuries on the body of Potami Pandu, he died and injuries were sufficient to cause death. On 7.12.1998, while in police custody accused gave memorandum Ex.P-6 to the Investigating Officer and in pursuance of that he got recovered weapon of offence i.e. knife & rod. After completion of usual investigation, charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Dantewada, who in turn committed the case to learned Sessions Judge, Jagdalpur.	

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The prosecution in order to establish the charge against the accused examined 5 witnesses. Statement of accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence.

Learned Sessions Judge after hearing learned counsel for the respective parties and after perusal of the record, convicted and sentenced the accused/appellant in the manner as mentioned above in Para 1 of this judgment.

We have heard Mr. Ram Krishna Sharma, Advocate for the accused/appellant and Mr. U.N.S. Deo, Additional Public Prosecutor for the State.

Learned counsel for the accused/appellant has not disputed the homicidal death of Potami Pandu. Apart from that by the extra judicial confession made by the accused before PW-2 Dhurva Kanhaiya & PW-4 Potami Bandu, wife of deceased as also the evidence of PW-1 Dr. D.P. Prajapati, who conducted the postmortem on the body of Potami Pandu and stated that there were 6 incised wounds, 8 stab wounds, there was one injury on the backbone. He has further stated that injury No.14 was passing through Thoracis Cavity, lung was cut, injuries were anti mortem in nature and were sufficient to cause death. The cause of death was head injury and haemorrhage on account of other injuries. It is established that the death of Potami Pandu was homicidal in nature.

As far as the involvement of the accused/appellant in crime in question is concerned, there is no direct or ocular evidence, the conviction

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is based on the extra judicial confession made by the accused as also the recovery of weapons of offence i.e. Knife & Rod at the instance of the accused. To resting the conviction based on the extra judicial confession, it is necessary that the extra judicial confession made by the accused must be voluntary & true and same should inspire confidence of the court.

PW-2 Dhurva Kanhaiya has stated that about 6-7 months accused came to him and said that he has committed murder of Potami Pandu with knife & rod, on which he along with other villagers went to the place where body of Potami Pandu was lying. They saw that there were injuries on the body of Potami Pandu. Thereafter they returned to village and convened a Panchayat in which the accused was also called and before the Panchayat the accused confessed that on account of land dispute he attacked Potami Pandu with the knife & rod. He further stated that on enquiry accused informed that he has concealed the knife & rod in the forest, same was reduced into writing as Ex.P-6 and in pursuance of that both the weapons of offence i.e. rod & knife were recovered under Ex.P-7. This witness has not been cross-examined on the aspect of extra judicial confession before the Panchayat & this witness and there is nothing to disbelieve the evidence of this witness. Even otherwise the evidence of this witness has been corroborated by PW-4 Potami Bandu, wife of deceased, who has stated that the accused came to her and informed that he has committed murder of her husband by attacking with knife & rod. She has further stated that accused used to quarrel with her husband for partition of land, therefore, there was a motive also for commission of the crime in question.

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	There is nothing on record, which suggest that the extra judicial confession made by the accused before PW-2 Dhurva Kanhaiya, PW-4 Potami Bandu as also before the Panchayat was not voluntary or true. The above extra judicial confession made by the accused stands corroborated by the fact that the weapons of offence, knife & rod were recovered at the instance of the accused and as per FSL report, same were stained with blood. Therefore, in the circumstances we do not find any illegality or infirmity in the judgment of the trial court for convicting the accused under Section 302 of IPC. The appeal being devoid of any merit liable to be dismissed and accordingly, it is dismissed. Sd/- L.C. BHADOO Judge Roshan/-	Sd/- DHIRENDRA MISHRA Judge

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